

EXHIBIT 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE)
COMMISSION,)
Plaintiff,) Case No.
vs.) 20 CV 10832 (AT)
RIPPLE LABS, INC.; BRADLEY)
GARLINGHOUSE, and CHRISTIAN A.)
LARSEN,)
Defendants.)
-----)

DEPOSITION OF WILLIAM HAROLD HINMAN, JR.

WASHINGTON, D.C.

JULY 27, 2021

REPORTED BY: Tina Alfaro, RPR, CRR, RMR

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1 A. Yes.

2 (Hinman Exhibit 10 was marked
3 for identification.)

4 BY MR. FIGEL:

5 Q. Let me show you what I'll ask the court
6 reporter to mark as Exhibit 10, which is EE in the
7 outline. Would you mind handing that to the court
8 reporter?

9 A. Hand it to the court reporter?

10 Q. Yes.

11 Mr. Hinman, I'm confident that you're
12 familiar with this document.

13 A. I am.

14 Q. I'll represent to you this is a copy of
15 your June 14th, 2018 speech that was taken off of
16 the SEC Website. You'll see at the top it's
17 entitled "Speech," and it says "Remarks at the
18 Yahoo Finance All Markets Summit: Crypto."

19 You were the author of this speech?

20 MR. TENREIRO: Object to form.

21 A. Yes.

22 Q. And you were responsible for the content

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1 of this speech?

2 MR. TENREIRO: I object to form.

3 A. Yes.

4 Q. And you prepared this speech as part of
5 your duties as the director of the division of
6 corporate finance, correct?

7 A. Again, I'm not sure I had a duty to
8 provide a speech, but I did do this speech while I
9 was the director, yes.

10 Q. You prepared this speech as part of the
11 services you provided to the Securities and
12 Exchange Commission in your capacity as the
13 director of the division of corporate finance,
14 correct?

15 A. I gave this speech while I was the
16 director of the division of corporation finance.

17 Q. And you knew that this exhibit, we're now
18 talking about Exhibit 10, the document, was posted
19 on the SEC's Website, correct?

20 A. Yes.

21 Q. And you understood -- withdrawn.

22 And did you understand prior to the time

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1 you delivered this speech that it would be posted
2 on the SEC's Website?

3 A. I think I did, yes. Normally we would
4 think about that in advance.

5 Q. Was it your decision to post the speech on
6 the SEC's Website?

7 A. Yes.

8 Q. And tell me what the process is by which
9 you made the judgment or the determination to post
10 the speech on the Website.

11 MR. TENREIRO: I'm going to instruct him
12 not to discuss deliberation with staff or
13 commissioners or their counsel. So you might want
14 to rephrase. I mean, the process by which he made
15 the judgment? I don't know, but go ahead.

16 A. Do you want to rephrase?

17 Q. Why don't you try to answer my question.

18 A. Could you repeat the question?

19 Q. Sure. I'll rephrase it slightly.

20 Why did you decide to post Exhibit 10 on
21 the SEC's Website?

22 MR. TENREIRO: And just, you know, the

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1 same instruction, but go ahead.

2 A. Typically if I gave a speech while I was
3 the director I would have it posted just to
4 benefit, you know, the folks who wanted to see it
5 who couldn't go to the conference or hear the
6 remarks live.

7 Q. And what benefit did you think folks who
8 didn't attend the conference would obtain from
9 having access to your speech?

10 MR. TENREIRO: Same instruction,
11 Mr. Hinman.

12 A. I think they would be able to see how the
13 division under my leadership was looking at these
14 issues.

15 Q. And you didn't personally post the speech
16 on the Website, correct?

17 A. That's right.

18 Q. There was somebody in the IT department at
19 the SEC who would post it?

20 A. That's right.

21 Q. And did you review it before it was
22 posted, this version?

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1 A. I don't know if I reviewed the actual
2 document that was handed over to IT, but I would
3 have looked at -- I've looked at this speech many
4 times before then and my counsel may have been the
5 folks that delivered this to IT.

6 Q. And presumably you had the opportunity to
7 review your speech prior to your testimony today?

8 A. Yes.

9 Q. Are there any statements in Exhibit 10
10 that you do not believe to be accurate as you sit
11 here today?

12 MR. TENREIRO: Without disclosing
13 deliberations with the staff that might have
14 occurred after the speech was published on the
15 Website.

16 A. I don't believe so.

17 Q. So in other words, if you were releasing
18 the speech today and you were still serving as the
19 director of the division of corporate finance,
20 would you edit this speech in any way before you
21 gave it?

22 MR. TENREIRO: Object to form.

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1 A. I don't think so.

2 Q. Why did you give the speech, Mr. Hinman?

3 MR. TENREIRO: Without disclosing -- you
4 know, so let's talk about the final decision only
5 and let's keep it high level, please, without
6 disclosing the reasons you might have discussed
7 with staff of the SEC or commissioners.

8 A. Okay. I was asked to attend the summit
9 and to speak at the summit, and we agreed -- or I
10 agreed to do that. You know, why I think I gave
11 it? Because this is an area where people were
12 interested in knowing how the division was looking
13 at these issues.

14 Q. And did you have an understanding as to
15 why people were interested in how the division was
16 looking at these issues?

17 MR. TENREIRO: Do not discuss -- or
18 disclose understandings you might have derived in
19 the deliberations or conversations with staff or
20 commissioners.

21 A. Based on my own meetings up to the date of
22 this speech with outside parties it seemed like

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1 this was an area they, again, were interested in
2 knowing more about how the division itself felt
3 about this area.

4 Q. And in your own mind did you think that
5 delivering this speech would answer any open issues
6 with respect to the application of the federal
7 securities laws to digital asset transactions?

8 MR. TENREIRO: So, again, even in his own
9 mind, if it's in his mind because it came from
10 conversations and discussions with staff, please
11 don't answer. Please try to uncouple what you
12 learned from, you know, your deliberations with the
13 staff to answer his question.

14 A. Okay. I'm sorry. Would you mind asking
15 me the question again?

16 Q. In your own mind did you think delivering
17 this speech would answer any open issues with
18 respect to the application of the federal
19 securities laws to digital asset transactions?

20 A. I think it would inform the marketplace of
21 how corporation -- the division of corporation
22 finance and I felt about these topics, but there's

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1 a whole host of things covered here.

2 Q. Did you think this -- withdrawn.

3 Did you believe this speech provided
4 clarity to the market with respect to the
5 application of the federal securities laws to
6 digitalize the transactions?

7 MR. TENREIRO: So same instruction on
8 deliberative process and also object to form.

9 A. I think it provided clarity as to how I
10 was looking at these issues.

11 Q. And did you have an -- withdrawn.

12 Did you believe that was new information
13 to the marketplace?

14 MR. TENREIRO: Same instruction.

15 A. I think how I felt about things or the
16 framework I had in my mind was, you know, not --
17 wasn't something I had published in a speech
18 earlier.

19 Q. And what about -- what are the things or
20 the framework that you had in your mind that you
21 communicated in the speech that you had not
22 published or stated earlier?

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1 A. Well, as I've mentioned before, a lot of
2 things that are in the speech have been covered in
3 earlier topics, the application of the Howey case
4 in general, our concern about information
5 asymmetries of people who were doing unregistered
6 offerings of tokens. What's more new here is a
7 framework that was meant to help people analyze,
8 okay, this is what I'm doing, am I offering a
9 security and do the securities laws apply, or at
10 least how is corp fin, the director looking at that
11 issue.

12 Q. And did you view that as guidance that you
13 were offering to the marketplace that had not been
14 made available in the past?

15 A. I think the framework was -- you know, in
16 terms of articulating specific factors was probably
17 the -- although we had referred to those things in
18 talking to market participants, I'm not sure we had
19 ever given a speech with the framework laid out the
20 way it is here.

21 Q. All right. Just a ministerial point. So
22 we have the written speech. We've entered into a

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1 attachment to the e-mail?

2 A. No.

3 Q. Are you familiar with the Blockchain
4 Association?

5 A. Not very.

6 Q. According to their Website they claim that
7 they're one of the "Leading advocacy groups in the
8 digital asset space whose goal is to improve the
9 public policy environment so that blockchain
10 networks will thrive in the United States."

11 Does that refresh your recollection at all
12 as to what the Blockchain Association is?

13 A. It sounds like a trade association.

14 Q. And they refer to themselves as the
15 unified voice of the blockchain in cryptocurrency
16 industry?

17 A. Okay.

18 Q. Does it refresh your recollection?

19 A. Just -- just that someone active in the
20 space. I don't really know them very well.

21 Q. And if you see the attachment, they sent a
22 document that bears the caption the "Hinman token

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1 standard, a reasonable framework for determining
2 when tokens are and are not securities." Do you
3 agree that your June 14th, 2018 speech announced a
4 Hinman token standard?

5 A. I guess people have called it that. I
6 didn't intend it for to be called the Hinman
7 standard.

8 Q. Putting aside the label, did you
9 understand that people would view your speech as
10 having announced a framework by which the division
11 of corporate finance would determine when tokens
12 are and are not securities?

13 A. The speech and other guidance was intended
14 to share more generally the framework that the
15 division was using in thinking about these assets.

16 Q. Did you disagree with the substance of
17 what is reflected in the attachment, which is your
18 speech announced a new framework for determining
19 when tokens are and are not securities?

20 MR. TENREIRO: Object to form.

21 A. Do I disagree that it announced a new
22 framework? I think I would quibble with that a

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1 little bit. I think that's a framework many folks
2 were using at the time.

3 Q. After your speech did third parties come
4 to the division of corporate finance and argue that
5 a digital transaction was not a security based on
6 the factors outlined in your speech?

7 A. They would cite the factors and other
8 factors.

9 Q. Did you accept that the factors set out in
10 your speech was the criteria by which the division
11 of corporate finance would evaluate whether a
12 digital asset transaction was a security?

13 A. Generally.

14 Q. And what do you mean by generally?

15 A. There are other factors that may be
16 relevant that are not in the framework, things that
17 are more derived from the Gary Plastic case, for
18 instance.

19 Q. Well, the factors that you outlined in
20 your speech that the Blockchain Association viewed
21 as the Hinman token standard was a new framework
22 that the division of corporate finance announced

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1 through you and your speech, correct?

2 MR. TENREIRO: Objection to form. He
3 already answered no to that question.

4 A. I think, again, it was the first time that
5 particular framework was published. So you could
6 call it a new publication, but I think the
7 framework itself, the principles underlying the
8 framework have been well known for a long time.

9 Q. And following the speech the division of
10 corporate finance applied the framework that you
11 announced on June 14th in connection with their
12 evaluation of whether digital asset transactions
13 were securities, correct?

14 A. Generally, but not always.

15 (Hinman Exhibit 35 and
16 Exhibit 36 were marked for
17 identification.)

18 BY MR. FIGEL:

19 Q. So I'm now showing you what is in the
20 outline as PPP and which I will ask the court
21 reporter to mark as Exhibit 35. In light of the
22 concern about the time I'm going to also show you